IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3397 OF 2007

Archana Kutir Co-op Hsg.Soc.Ltd. ...Petitioner

vs.

Sweet Home Interior Pvt.Ltd. ...Respondent

Mr.N.N.Bhadrashete for the Petitioner
Mr.Vipul Shukla for the Respondent.

CORAM: A.S.OKA,J.
DATE : JULY 11, 2007.

P.C.:

1. Rule. Learned Advocate for the Respondent waives service. Considering the facts and circumstances of the case taken up for hearing forthwith.

2. The Petitioner filed a dispute under section 91 of the Maharashtra Cooperative Societies Act,1960 before the Co-operative Court against the Respondent. During the pendency of the dispute, the Petitioner applied for amendment of the dispute. The application for amendment was allowed by the Co-operative Court. In an Appeal preferred by the Respondent, the learned President of the Maharashtra State Appellate Court by Judgment and Order dated 15th January 2007 allowed the Appeal and the Application for amendment was dismissed. The order of the Appellate Court is the subject matter of the challenge in this Petition under Article 227 of Constitution of India.

3. The dispute filed by the Petitioner is for direction to the Respondent to hand over the possession of the shops more particularly described in the dispute. There is a prayer in the dispute directing the Respondent to pay a sum of Rs.54,951/- being the sum payable up to December 1991 with interest thereon @ 12%. There is also a prayer for payment of mesne profits at the rate of Rs.1,00,000/- effective from 1-1-1992. There are other prayers in the dispute.

4. On 18th November 1998, an Application was filed by the Petitioner seeking a direction against the Respondent for payment of Rs.1,58,740/- due and payable up to 31st December 1998 and with a further direction to continue to pay every quarter the increased amount of Rs.3262/- on account of increase in the municipal assessment. By order dated 1st April 1999, the said application was rejected by the Co-operative court. An Appeal was preferred by the Petitioner against the said order which was withdrawn.

5. On 23rd June 2005, an application for amendment of the dispute was made by the Petitioner. By the said Application for amendment, it was pointed out that during the pendency of the dispute, the Municipal Corporation has increased the municipal taxes. Consequently, the maintenance charges were also increased. The Petitioner-society was also required to spend amount for repairs. Therefore, a monetary claim was

sought to be introduced by amending the dispute. The said application for amendment was contested by the Respondent by filing a reply. It was contended that the application for amendment was filed belatedly. It was submitted that in view of the order dated 1st April 1999 passed by the Co-operative court on the earlier application dated 18th November 1998 filed by the Petitioner, an application for amendment was not maintainable. It was pointed out that against the said earlier order, the Appeal was preferred which was unconditionally withdrawn. The learned Judge of the Co-operative Court by order dated 22nd May 2006 allowed the amendment. By the impugned order, the order of the Co-operative court has been set aside.

6. The submission of the learned Counsel for the Petitioner is that the issue regarding bar of limitation could not have been decided at the stage of consideration of application for amendment. He submitted that bar of res judicata will not apply. The submission of the learned Advocate for the Respondent is that the prayer which was made by earlier application dated 18th November 1998 was rejected by the Co-operative Court and as the said order has attained finality, the issues raised in the said application cannot be re-agitated by filing an application for amendment. He, therefore, submitted that the principles analogous to res-judicata are clearly applicable.

7. I have considered the submissions. I have perused the application dated 18th November 1998 made by the Petitioner. The said application was not for amendment of the dispute. The application seeks a direction against the Respondent to pay certain amounts. While rejecting the said application, an observation was made by the Co-operative Court that though the claim was sought to be made on the basis of the subsequent events, the Petitioner-society has not amended the dispute. In fact, the application was rejected on the ground that the reliefs claimed therein were not incorporated in the dispute by carrying out an amendment. Therefore, this is not a case where similar amendment was sought earlier and was rejected. It is true that the Petitioner did not apply for amendment immediately after rejection of the earlier application. However, if the text of the amendment is perused, it is impossible to say that the entire claim sought to be made by the amendment is barred by limitation. It is obvious that even if the amendment is to be allowed, the Respondent can always raise the contention regarding bar of limitation by filing additional written statement that the amended claim is barred by limitation.

8. In view of the prayer made in the earlier application dated 18th November 1998 and the ground on which the said application was rejected, it is obvious that the Appellate

Court has committed an error by holding that the principles analogous to res judicata are applicable. The learned President of the Appellate Court could not have considered the merits of the amendment and recorded a finding that the same was barred by limitation. In my view, the Appellate Court has committed an error by interfering with the order passed by the Co-operative Court. Therefore, the impugned Judgment and Order deserves to be quashed and set aside. However, it will have to be observed that the issue of limitation is kept open and the Respondent can always agitate the same by filing an additional written statement.

9. Hence, I pass the following order :

i) Impugned Order dated 15th January 2007 is quashed and set aside and the order passed by the Co-operative Court on 22nd May 2006 (Exh.H) is hereby restored.

ii) It will be open for the Respondent to file additional written statement to the amended dispute.

iii) All contentions of the Respondent including the contention regarding bar of limitation in so far as amended prayers are concerned are expressly kept open.

iv) Rule is made absolute in above terms with no order as to costs.

JUDGE